



Old Dominion Association of Church Schools

December 11, 2017

Memo to ODACS Ministries

Subjects: VDSS Fingerprint Background Check Memo; VDSS Offer to Pay for Background Checks;
ODACS Counsel to Churches to Decline Government Subsidy of the Background Checks

Summary

On October 12, the Virginia Department of Social Services issued a memo to Religious Exempt childcare centers addressing the issue of fingerprint background checks. ODACS subsequently issued a memo to its ministries; that memo discussed the ODACS response to the October 12 memo. At the time of the ODACS memo and conference call, ODACS had submitted questions to VDSS about the October 12 memo but had not yet received answers to those questions. VDSS has finally answered the ODACS questions.

Recorded Conference Call

ODACS conducted an important meeting via conference call on Tuesday, November 28. The meeting was recorded for the benefit of those who could not participate live. That recording will continue to be available through December 28. Information about how to listen to the recording online has been sent to schools; please contact the ODACS office if you need to receive that information again.

Review of the Issue, and Report of New Information

VDSS Memo Dated October 12, 2017

Subject: DSS Funding of Fingerprint Background Checks - Implementation Memo #3

On October 12, 2017, VDSS releases a memo announcing that they would cover the initial cost for fingerprint background checks. Among the details included in this memo were the following:

- Funding will be temporary, ending on September 30, 2018, or until the funding is exhausted, whichever comes first.
- The cost of the background check for an employee or applicant will be \$57.00. The cost for a volunteer will be \$38.00.
- All background checks will be performed through a single provider, Fieldprint. VDSS had already announced this in an earlier memo, but it was repeated in the October 12 memo.
- Although the law came into effect on July 1, 2017, with an implementation date of September 30, 2017, VDSS has obtained a one-year waiver from the federal government.
- Background checks will be “phased in.” In other words, once VDSS is ready to begin implementation, they will not be able to require *all* childcare centers to submit fingerprints at one time. The memo goes on to say that further information about the phase in will be included in a future memo.

This memo raised several concerns from an ODACS perspective, and we submitted the following questions to VDSS.

1. How many dollars does VDSS have available to use to cover the initial cost of the fingerprint background checks?
2. What is the source of the money? Does it come from the Childcare and Development Block Grant, does it come from the General Assembly, or does it come from another source?
3. Will Religious Exempt childcare centers be required to sign any kind of certification in order to qualify for the subsidy? If so, what are the details of that certification?
4. Does this appropriation of taxpayer dollars require approval from the General Assembly? If so, how has that approval been granted?
5. Does such a subsidy create an issue with Virginia's Blaine Amendment? In other words, is it legal?

VDSS has answered our questions.

The answers to #2 and #3 give ODACS cause for great concern. The following answers are quoted from Charlene Vincent, Director of the Division for Licensing for Children's Programs for VDSS.

Regarding Questions 1 and 2: "In response to your email, and as indicated in the VDSS memo dated October 12, 2017, the Department of Social Services anticipates having sufficient funds to cover the cost of fingerprint background checks through September 2018. **Federal Child Care and Development Fund dollars will be used for this.**" [Emphasis added]

Regarding Question 3: "Child care providers that participate in the Child Care Subsidy Program **must comply with the program requirements** which can be viewed on the VDSS public website at http://www.dss.virginia.gov/files/division/cc/assistance/providers/vendor_agreements/center_vendor_agreement_with_inspection_requirements_rev112116.pdf." [Emphasis Added]

ODACS Advice

Based on these answers, and *despite any differing guidance that you may receive from any other organization*, ODACS advises its ministries to *NOT* accept financial assistance from the state for the fees arising from implementation of the fingerprint background check law. The rationale for this advice can be summarized in two reasons.

1. **The contents of the 47-page subsidy agreement document amount to licensure in effect.** For the state to place so many new requirements on a church ministry, and for a church ministry to agree to such requirements, constitutes a violation of the principle of Separation of Church and State.
2. **The subsidy agreement includes provisions prohibiting "discrimination" against any recipient or child on the basis of "gender identity" or "sexual orientation."** (See page 13 of the agreement.) To sign the agreement and accept the subsidy would therefore place a church in a position of opposing God's designs for human sex/gender and for human sexuality as revealed in God's Word.

Throughout the debate on the issue of the background checks, ODACS has been concerned that the government has a goal of using the child safety issue as a pretext to gain control of church-run daycares and to force churches to comply with a "progressive" social agenda. The recent developments regarding subsidy of the fingerprint background checks appears to have validated those concerns.

VDSS has informed us that they plan to phase in implementation of the fingerprint background checks beginning in January. Later this week, ODACS will be communicating to VDSS the advice that we have given to our ministries, and we will request their help with information about how our ministries can decline the subsidy and pay for the background checks themselves.

Other Reminders About Fingerprint Background Checks

VDSS knows that the state law requiring fingerprint background checks for Religious Exempt childcare centers has a one-year sunset clause with a June 30, 2018, expiration date. This means that we are guaranteed to have another battle over this issue in the 2018 General Assembly. ODACS will continue to oppose the law using the same arguments that we used in 2017. Recent developments will give us more arguments to use in opposition to the law.

Please feel free to contact the ODACS office with your comments or questions.

Sincerely,

Dan Zacharias
Executive Director